Versatech Industries, Inc. *and* Service Employees International Union, Local 254, AFL–CIO. Case 1–CA–38494

April 5, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND WALSH

Upon a charge filed by the Union on October 10, 2000, the Acting General Counsel of the National Labor Relations Board issued a complaint on January 3, 2001 against Versatech Industries, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) and 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.[1]

On March 6, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On March 8, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 30, 2001, notified the Respondent's Bankruptcy Attorney and its Agent for Service of Process that unless an answer were received by February 6, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Chestnut Hill, Massachusetts, has been engaged in the business of providing cleaning services for Bloomingdale's, a retail department store, in Chestnut Hill, Massachusetts. During the calendar year ending December 31, 1999, the Respondent, in conducting its business operations described above, performed services valued in excess of $50,000 for Bloomingdale's, an enterprise directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Service Employees International Union, Local 254, AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Vincent J. Lennox Jr. held the position of the Respondent's chief executive officer and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time cleaning employees, employed by Respondent at its Bloomingdale's Chestnut Hill, Massachusetts facility, but excluding office clerical employees, professional employees, managerial employees, casual employees, confidential employees, guards, and supervisors as defined in the Act.

At all times since September 7, 1999, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement effective July 5, 2000 until August 31, 2002, setting

[1] The Acting General Counsel avers that on October 23, 2000, a copy of the charge was served on the Respondent by certified mail at the last known address. The envelope was returned marked as "Non-Deliverable as Addressed—Unable to Forward" and further marked "MLNA" a.k.a. Moved Left No Address. On November 8, 2000, a cover letter and copy of the charge were served by certified mail upon the Agent for Service of Process for the Respondent and were received on November 13, 2000. On January 3, 2001, copies of the complaint and notice of hearing were served by certified mail upon the Respondent, its bankruptcy attorney, and its agent for service of process. On January 8, 2001, the copy of the complaint and notice of hearing served upon the Respondent was returned to the Regional Office by the United States Postal Service and marked "Return to Sender" and "MLNA." The copies of the complaint sent to the attorney and the agent were received by them. No answer was received during the prescribed period of time listed in Sec. 102.20 of the Board's Rules and Regulations. Thereafter, the Region notified the Bankruptcy Attorney and Agent for Service of Process for the Respondent, by certified mail, on January 30, 2001, that if no answer was received by the Regional Office by close of business on February 6, 2001, a Motion for Summary Judgment would be filed. Under the Board's Rules, service is accomplished by deposit in the mail to the last known address of a respondent. This was done here, and the Respondent's failure to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

setting forth the terms and conditions of employment of the unit, including wages.

From about April 10, 2000 to July 5, 2000, the Respondent failed to pay employees their wages. Since about July 5, 2000, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement described above by failing to pay employees their wages as provided for in the collective-bargaining agreement. The above subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent failed to pay employees their wages from April 10, 2000, to July 5, 2000, without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct. The Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement after July 5, 2000, by failing to pay employees as provided for in the collective bargaining agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (5), and 8(d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) and 8(d) by first, failing to pay employees their wages without providing the Union notice and an opportunity to bargain, and by failing to pay unit employees contractual wages rates, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Versatech Industries, Inc., Chestnut Hill, Massachusetts, its officers, agents, successors, and assigns, shall

1.Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Service Employees International Union, Local 254, AFL–CIO as the exclusive representative of the employees in the bargaining unit set forth below by refusing to make contractual wage payments to unit employees:

> All full-time and regular part-time cleaning employees, employed by Respondent at its Bloomingdale's Chestnut Hill, Massachusetts facility, but excluding office clerical employees, professional employees, managerial employees, casual employees, confidential employees, guards, and supervisors as defined in the Act.

(b) Unilaterally changing terms and conditions of employment without first providing Service Employees International Union, Local 254, AFL–CIO with notice and an opportunity to bargin.

(c) Any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2.Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay employees' wages from April 10, 2000 to July 5, 2000, consistent with what they were earning prior to the Respondent's unlawful conduct, including any regularly scheduled bonuses or increases, including interest as set forth in the remedy section of this decision.

(b) Pay employees their contractual wages since July 5, 2000, as determined by the July 5, 2000 collective-bargaining agreement, with interest as set forth in the remedy section of this decision.

(c) Make employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to pay the employees' wages.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Chestnut Hill, Massachusetts, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 10, 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 5, 2001

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally change terms and conditions of employment without first providing Service Employees International Union, Local 254, AFL–CIO with notice and an opportunity to bargain.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Service Employees International Union, Local 254, AFL–CIO, which is the recognized exclusive bargaining representative of our employees in an appropriate unit, by failing and refusing to make contractual wage payments to unit employees. The appropriate unit consists of:

> All full-time and regular part-time cleaning employees, employed by us at our Bloomingdale's Chestnut Hill, Massachusetts facility, but excluding office clerical employees, professional employees, managerial employees, casual employees, confidential employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL pay employees' wages from April 10, 2000 to July 5, 2000, consistent with what they were making at this time prior to our unlawful conduct, including any regularly scheduled bonuses or increases, including interest.

WE WILL pay employees their contractual wages since July 5, 2000, as determined by the July 5, 2000 collective-bargaining agreement, with interest.

WE WILL make employees whole for any loss of benefits or other expenses suffered as a result of our failure to pay the employees' wages.

VERSATECH INDUSTRIES, INC.